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torney from purchasing even outright from his client the subject-matter of a suit which the attorney is conducting.¹⁹ Only a right of action was transferred in all the cases found, with possibly one exception,²⁰ but the language used and in some instances the reasons given apply equally to the transfer of a thing in possession.

From the jumble of cases it is difficult to deduce fixed rules as to what transfers are to-day forbidden. The common-law doctrines have to a large extent become obsolete²¹ and ideas of public policy²² instead of hard and fast rules are employed to determine what transactions are obnoxious.²³ "The present legal doctrine of maintenance is due to an attempt on the part of the Courts to carve out of the old law such remnant as is in consonance with our modern notions of public policy."²⁴

WHAT IS COMMERCE. — Much of the difficulty in the interpretation of the interstate commerce clause of the federal Constitution has been due to the uncertainty of the meaning of the word "commerce." The dictionary definition is "an interchange of goods, merchandise, or property of any kind."¹ Yet it has always been clear that the term, as used in the Constitution, was intended to have a broader scope. Marshall, C. J., laid down the much-repeated maxim that "commerce is intercourse."² Every contract would be included in this definition, but it is uncontroverted that a mere contract made between citizens of different states is not in itself interstate commerce.³ Therefore the adoption of this term is of little assistance for the question merely becomes, what intercourse is included.

Prior to the adoption of the Constitution the states imposed different import and export duties, resulting in vexatious regulations and restrictions. Hence in giving Congress power to regulate interstate commerce it would seem clear that the evil sought to be remedied was the interference by a state with the free movement of goods or of individuals. It was early settled that the transportation of individuals into a state is commerce.⁴ It is also settled that the transportation of goods from one

¹⁹ *Simpson v. Lamb*, 7 E. & B. 84; *West v. Raymond*, 21 Ind. 305; *Miles v. Mut. Reserve Fund Life Ass'n.*, 108 Wis. 421. Some courts have permitted such a purchase subject to the usual close examination for fraud or unfairness given any transaction between attorney and client. *Myers v. Luzerne County*, 124 Fed. 436. See *Dunn v. Record*, 63 Me. 17, 19. And an attorney may take an assignment of such property as security for services rendered in the suit. *Anderson v. Radcliffe*, E. B. & E. 806. *Cf. Mott v. Harrington*, 12 Vt. 199.

²⁰ *Rogers v. R. E. Lee Mining Co.*, 9 Fed. 721.

²¹ See *Casserleigh v. Wood*, 14 Colo. App. 265, 270.

²² It is now recognized that the law against champerty and maintenance is designed to prevent unnecessary litigation and the trafficking in quarrels. See *Miles v. Mut. Reserve Fund Life Ass'n.*, *supra*.

²³ See *Casserleigh v. Wood*, *supra*; *Fischer v. Kamala Naicker*, 8 Moo. Ind. App. 170, 187; *POLLOCK, CONTRACTS*, 3 Am. ed. 460.

²⁴ *Brit. C. & P. Conveyors, Lim. v. Lamson Store Service Co., Ltd.*, [1908] 1 K. B. 1006, 1013.

¹ See CENTURY DICTIONARY.

² *Gibbons v. Ogden*, 9 Wheat. (U. S.) 189.

³ *Paul v. Virginia*, 8 Wall. (U. S.) 168.

⁴ *Gibbons v. Ogden*, *supra*; *Passenger Cases*, 7 How. (U. S.) 283.

state to another constitutes commerce whether or not in connection with a sale of the goods transported.⁵ On the other hand the mere effecting of a sale, where the introduction of the property sold is not necessarily involved, is not within the term.⁶ But intervening acts, such as solicitations of a drummer, which are instrumental in bringing about the introduction of property, are themselves subject to regulation as commerce.⁷ Thus the decisions lead to the general conclusion that a commercial transaction, in the constitutional sense, is one whose object is to effect the transportation of persons or property.

Until recently courts asserted that what is transmitted must be an ordinary subject of traffic having in itself a recognized money value.⁸ To-day, however, the transmission of intelligence is held to be commerce.⁹ Telegraphic and telephonic communications are thus brought within this category, though such companies can be subjected to the commerce clause on the ground of being adjuncts of commerce.¹⁰

The question arises how far a transaction will be regarded as interstate commerce simply because it incidentally involves the transportation of property. Doing insurance business in a foreign state has consistently been held not to be interstate commerce.¹¹ Although incidentally the insurance policy will be sent from another state the gist of the transaction is not the transmission of property, but indemnity in case of loss. Thus a commission broker telegraphing orders to another state, in which the goods were to remain, has been held not to be engaged in interstate commerce, the mode of his effecting sales being purely incidental.¹² In a recent case, *Imperial Curtain Co. v. Jacob*, 127 N. W. 772 (Mich.), a foreign corporation contracted with a resident of Michigan to exhibit in Michigan a sign bearing an advertisement of the latter's business. Though there was involved the sending of the sign from the foreign state to the place of exhibition the transaction was held not to be interstate commerce. This class of decisions has been criticised.¹³ Yet they seem sound when the conditions which the Constitution sought to remedy are considered. It is doubtful whether, in desiring the transmission of property to be unrestricted by the separate states, it was intended to hamper the states to the extent of preventing them from regulating transactions which in a purely incidental way involved interstate shipments.

⁵ The language in the early cases would seem to confine commercial shipments to those involving sales. See *State Freight Cases*, 15 Wall. (U. S.) 232. Yet later decisions show that a sale is not essential. *Butler Bros. Shoe Co. v. United States Rubber Co.*, 156 Fed. 1 (consignment of goods to a factor).

⁶ *Ware and Leland v. Mobile County*, 209 U. S. 405.

⁷ *Robbins v. Shelby Taxing District*, 120 U. S. 489; *McCall v. California*, 136 U. S. 104.

⁸ *Lottery Cases*, 188 U. S. 321.

⁹ *International Text Book Co. v. Pigg*, 217 U. S. 91 (a correspondence school doing business in different states was held to be engaged in interstate commerce). See 23 HARV. L. REV. 644.

¹⁰ *Pensacola Telegraph Co. v. Western Union Telegraph Co.*, 96 U. S. 1; *Muskogee Nat. Tel. Co. v. Hall*, 118 Fed. 382.

¹¹ *Paul v. Virginia*, *supra*. On principle it would seem proper for Congress to regulate companies engaged in marine insurance and also those insuring goods which are shipped between the states, on the ground that such insurance is an adjunct of commerce. But the law is otherwise. *Hooper v. California*, 155 U. S. 648.

¹² *Ware and Leland v. Mobile County*, *supra*.

¹³ See 39 AM. LAW REV. 181; COOKE, THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION, § 7.